

and delivery) so that the express consignment company can exercise a high degree of control over the shipments, particularly in regard to the reliability of information supplied for Customs purposes. Such control would be indicated by substantial common ownership between the local company and the foreign affiliate and/or by a very close contractual relationship between the local company and its foreign affiliate(s) (*e.g.*, a franchise arrangement).

(g) *Reimbursable*. “Reimbursable” means all normal costs incurred at an express consignment operator’s hub or an express consignment carrier facility that are required to be reimbursed to the Government.

Subpart B—Administration

§ 128.11 Express consignment carrier application process.

(a) *Facility application*. Requests for approval of an express consignment carrier or hub facility must be in writing to the port director.

(b) *Application contents*. The application for approval of an express consignment carrier or hub facility must include the following:

(1) A full description of the international cargo facilities, including blueprints, floor plans and facility location(s).

(2) A statement of the general character of the express consignment operations that includes, in the case of an express consignment carrier facility, a list of all carriers or operators that intend to use the facility.

(3) An estimate of volume of transactions by:

(i) Formal entries.

(ii) Informal entries.

(iii) Shipments not requiring entry (see § 128.23 of this part).

(4) An application processing fee, as set forth in § 128.13.

(5) A list of principal company officials or officers.

(6) A projected start-up date, and days and hours of operation.

(7) An agreement that the express consignment entity will:

(i) Ensure that all cargo will be processed in the Customs Automated Commercial System (ACS) and associated modules, including, but not limited to,

Automated Broker Interface (ABI), Automated Manifest System (AMS), Cargo Selectivity, and Statement Processing.

(ii) Sign and implement a narcotics enforcement agreement with U.S. Immigration and Customs Enforcement (ICE).

(iii) Provide, without cost to the Government, adequate office space, equipment, furnishings, supplies and security as per CBP’s specifications.

(iv) If the entity is an express consignment carrier facility, provide to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, at the beginning of each calendar quarter, a list of all carriers or operators currently using the facility and notify that office whenever a new carrier or operator begins to use the facility or whenever a carrier or operator ceases to use the facility.

(v) If the entity is a hub facility or an express consignment carrier, timely pay all applicable processing fees prescribed in § 24.23 of this chapter.

(c) *Changes or alterations to facility*. All proposed changes or alterations to an existing approved international cargo processing facility must be submitted in writing to the port director for approval prior to the implementation thereof and must contain the information specified in paragraph (b) of this section. Failure to obtain CBP approval by an express consignment operator or carrier for any modifications to the international cargo processing area may result in the suspension of approval as an express consignment facility or hub and the procedures for processing cargo contained in this part.

[T.D. 89–53, 54 FR 19566, May. 8, 1989, as amended by T.D. 93–66, 58 FR 44130, Aug. 19, 1993; CBP. 07–29, 72 FR 31725, June 8, 2007]

§ 128.12 Application approval/denial and suspension of operating privileges.

(a) *Notice*. (1) The port director shall promptly notify the applicant in writing of the decision to approve or deny the application to establish an express consignment carrier or hub facility or to suspend or revoke operating privileges at an existing facility.

(2) The notice shall specifically state the grounds for denial or for the proposed suspension or revocation.

(b) *Appeal*. The express consignment entity may file a written notice of appeal seeking review of the denial or proposed suspension or revocation within 30 days after notification.

(c) *Recommendation*. The port director shall consider the allegations and responses in the appeal unless, in the case of a suspension or revocation, the express consignment entity requests a hearing. The appeal along with the port director's recommendation shall be forwarded to the Commissioner of Customs or his designee for a final administrative decision.

(d) *Hearing*. In the case of a proposed suspension or revocation, a hearing may be requested within 30 days after notification. If a hearing is requested, it shall be held before a hearing officer appointed by the Commissioner of Customs or his designee within 30 days following the express consignment entity's request. The entity shall be notified of the time and place of the hearing at least 5 days prior thereto. The express consignment entity may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the express consignment entity. At the conclusion of the hearing, all papers and the stenographic record of the hearing shall promptly be transmitted to the Commissioner of Customs or his designee together with a recommendation for final action. The express consignment entity may submit in writing additional views or arguments to the Commissioner or his designee following a hearing on the basis of the stenographic record, within 10 days after delivery to it of a copy of such record. The Commissioner or his designee shall thereafter render the decision in writing, stating the reasons therefor. Such decision shall be served on the express consignment entity, and shall be considered the final administrative action.

§ 128.13 Application processing fee.

Each operator of an express consignment hub or carrier facility will be charged a fee to establish, alter, or relocate such facility which shall be determined under the provisions of 31 U.S.C. 9701. The fee will be periodically reviewed and revised to reflect changes in processing expenses and any changes thereto will be published in the FEDERAL REGISTER and "Customs Bulletin".

Subpart C—Procedures

§ 128.21 Manifest requirements.

(a) *Additional information*. Express consignment operators and carriers shall provide the following manifest information in advance of the arrival of all cargo, including all articles for which an entry is not required as noted in § 128.23 (which shall be listed separately and their entry status noted), in addition to the information and documents otherwise required by this chapter:

(1) Country of origin of the merchandise.

(2) Shipper name, address and country.

(3) Ultimate consignee name and address.

(4) Specific description of the merchandise, and under the following conditions, the Harmonized Tariff Schedule of the United States (HTSUS) sub-heading number:

(i) If the merchandise is required to be formally entered as provided in § 128.25; or

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in § 128.24, but may not be passed free of duty and tax as consisting of a shipment of merchandise imported by one person on one day having a fair retail value in the country of shipment not exceeding \$200, as provided in § 128.24(e).

(5) Quantity.

(6) Shipping weight.

(7) Value.

(b) *Sorting of cargo*. If the shipments are physically sorted by country of origin of the merchandise when they arrive at the hub or express consignment facility and are presented to Customs in this manner, the advance manifest